No. 15339

IN THE

United States Court of Appeals

For the Ninth Circuit

AMERICAN TRUST COMPANY, a Corporation,

Plaintiff-Appellant,

vs.

JAMES G. SMYTH, Collector of Internal Revenue, and UNITED STATES OF AMERICA,

Defendants-Appellees.

REPLY BRIEF FOR PLAINTIFF-APPELLANT

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APPELLANT'S REPLY BRIEF

The defendants' brief completely misconceives the fundamental issue in this case and fails to answer our major points.

At the outset (p. 16) "the crucial issue", say the defendants, centers on the question whether the tax here in issue "is being imposed" on the remaindermen, or "is on the trust", adding that, as the exemption deals "exclusively" with taxes imposed by the United States, it would seem "fairly clear" that the treaty intended that the question be answered "only in relationship to the laws of the United States",[1] meaning, as the defendants later make abundantly clear, that the scheme of our domestic statutes taxing trusts (as exemplified in Sections 161 and 162 of our Code) is still controlling, in spite of the exemption accorded in the United Kingdom treaty.

We do not agree that "the crucial issue" is as the defendants frame it. The "crucial issue", we submit, is

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[1] We do not agree that the statement is "fortified" by Article II (3) of the convention, for the reasons set forth on page 6, *infra*.

the extent of the exemption *accorded by the treaty,* without regard to the question of upon whom the tax, but for the exemption, is "imposed" under our domestic statutes. The exemption applies to United States taxes but is not one "dealing exclusively" with United States taxes. It must be considered in the light of the United Kingdom tax structure, for Article XIV unquestionably is aimed at reciprocity and equality of treatment, as the defendants admit.

The extent of the exemption under the treaty must be resolved, we submit, on the basis of the intent of the contracting parties as disclosed by the treaty as a whole and by the language of Article XIV in particular. Without some supporting factual proof in the record, it cannot be presumed, as the defendants are intent upon doing, that our domestic rule taxing trusts was adopted as controlling in framing Article XIV, or in determining the extent of the exemption intended to be accorded under the treaty. If any presumption is to be indulged in it is that the British negotiators, intent on accomplishing full reciprocity for British nationals, were content to couch the exemption in Article XIV in broad and all-embracing language, while at the same time refusing to include the standard saving clause.

The familiarity of American judge and lawyer alike with our mechanics of taxing trusts should not, we submit, be allowed to influence the interpretation of an international treaty, which as finally drawn represents agreement on the part of the negotiators representing the foreign nation (unversed in our domestic law) as well as our own negotiators, unless the treaty indicates on its face that our domestic rules intentionally were adopted as part of the treaty, as, for example, the incorporation of the standard saving clause.

The major argument of the defendants, which runs throughout their brief, is that *under our domestic statutes*

a trust is a separate entity (pp. 18, 19, 20), that the trustee is the "taxpayer" upon whom the tax is "imposed" (pp. 16, 20, 21, 22, 27), and that to extend the treaty exemption to trust gains retained for future distribution would result in the "repeal" of Sections 161 and 162 of our Revenue Code (pp. 31, 32, 35, 38), a theory which is not to be favored (p. 32).

The argument is unconvincing for a number of vital reasons. We are here engaged in interpreting a treaty between two sovereign nations, more particularly an exemption provision exempting from United States tax the capital gains of nationals of the United Kingdom, implemented without restriction or limitation by Section 22(b)(7) of our Code. It is true that under our domestic statutes a trust for tax purposes is treated as a separate entity. But Article XIV does not deal with individual taxpayers of the United States, or with our domestic scheme of taxation. Its sole purpose is to grant an equalizing exemption to residents of another nation, in order to reciprocate such nation's tax treatment of capital gains. Moreover, as we pointed out in our Opening Brief, page 31, the treaty, while expressly recognizing a corporation as a separate entity, nowhere accords a trust either the status of an ''entity'' or of a ''juridical person''. The theory of the separate entity of trusts is wholly a doctrine of our *domestic statutes,* with no counterpart in the treaty.

Secondly, and again under our domestic statutes, the defendants say that the trustee is the "taxpayer" and the tax is "imposed" on the trustee and not upon the remaindermen, adding (p. 19) that the trustee does not act "as a mere agent in the collection of the income but receives such income as a taxable entity in its own right and not as an agent or conduit for the beneficiaries". This of course is technically true *under our domestic statutes.* But from the broader standpoint of an exemption in an international treaty, the argument does not bear analysis. In dealing

with trust property a trustee acts as a fiduciary only. He collects the income, whether current income or capital gains. But the income is not his; it is the income of the beneficiaries by any test of real ownership. He is strictly accountable to the beneficiaries in accordance with the trust instrument. This accountability extends to the life beneficiaries in respect of currently distributable income, and to the remaindermen in respect of retained capital gains. Whether distributable or retained, the gains are not the trustee's gains but the property of the beneficiaries. In a broad and non-technical sense, the trustee is in reality acting for and as the agent of the beneficiaries, whether the income which he collects is distributed or retained. The beneficiaries, and not the trustee, are the real parties in interest and the real owners of the income. A tax "imposed" upon the trustee is in substance and reality a tax imposed upon the beneficiaries, who assuredly pay it out of property belonging to them.

Take the case of a United States trust where one of two remaindermen is a charitable organization. The trustee is the "taxpayer" and must file a return and pay any tax which may be due on account of retained capital gains held for the non-charitable remainderman. But the capital gains retained and permanently set aside for the charity are exempt in the hands of the trustee even though the trustee is not exempt; it is the exempt status of the remainderman which relieves the trustee of the tax. In view of the evident intent in the treaty to accomplish reciprocity, it is not unreasonable to apply the same principle in exempting capital gains under Article XIV.

Finally, to extend the treaty exemption to capital gains retained for future distribution does not, as the defendants assert, result in a "repeal" of Sections 161 and 162. In any case where capital gains are involved which, except for an exemption, would be taxable under our domestic statutes, the exemption necessarily overrides our domestic statutes

to the extent that the non-resident aliens of the particular nation involved (here residents of the United Kingdom) are relieved from our capital gains taxes. But the sections of our statutes taxing capital gains stand untouched, subject to the limited relief accorded by the exemption.

With a view of showing the inherent fallacy of the defendants' entire major argument, let us suppose as an example that the language of Article XIV was express in exempting from United States tax capital gains of a trust held for future distribution. On such an assumption, assuredly the fact that under our domestic statutes a trust is considered a separate entity and the tax on retained gains is "imposed" on the trustee would not be ground for denying the exemption, and assuredly the exemption would not constitute a "repeal" of Sections 161 and 162.

The language of Article XIV, while not so specific, properly interpreted does, we submit, encompass within its intent and scope retained capital gains. In any event, the foregoing example serves to show that the taxability or non-taxability of the gains here involved should be determined within the four corners of the treaty, without regard to the scheme of our domestic statutes taxing trusts, unless it can be shown that the negotiators of the treaty intended to adopt and *make part of the treaty* the United States theory of taxing trusts.

On the face of the treaty there is nothing to indicate directly or by implication that such was the intention of the negotiators. There is nothing in the Committee Reports indicating any such intention. No minutes of the negotiators, if any such exist, were introduced in evidence. The record is devoid of any factual proof on the point. On the other hand, the language of the treaty as a whole and the all-embracing language of Article XIV in particular negatives the existence of any such intention. Finally, and perhaps conclusively, the absence of the stand-

ard saving clause (appearing in fifteen of our nineteen international income tax conventions) seems definitely to negative such an intention.

In the absence of any saving clause the defendants undertake to seek comfort in Article II(3) (pp. 16, 24, 27, 37) and in Article III(1) and (2). Article II(3) is quoted in full on page 16 of the defendants' brief. The article, as a reading of it indicates, is directed at any "*term*" of the convention not otherwise defined. The only "terms" in Article XIV with which we are concerned are "A resident of the United Kingdom", "exempt", "sale or exchange" and "capital assets". The term "trust" does not appear in the convention. There is no question about the meaning of any of the terms appearing in Article XIV except possibly the term "exempt" (which we have already discussed in our Opening Brief, page 19). Certainly, Article II(3) does not, as the defendants say on page 24, amount to "an expression of policy" that the convention is to be construed in accordance with the laws of the country imposing a tax.

Moreover, Article II(3) is qualified by the clause "unless the context otherwise requires". Here, we submit, the context in which the word "exempt" appears negatives the meaning of the word as incorporating our domestic rules of taxing trusts. As we have shown, the theory and intent of the treaty from beginning to end was to accomplish reciprocity and equality of tax treatment. Article XIV was no exception. If reciprocity is to be accorded in respect to capital gains, the word "exempt" must embrace in its meaning the type of exemption which it is designed to reciprocate, namely, the same relief from tax in the United States as is accorded capital gains in the United Kingdom.

Article III(1) and (2) equally falls short of sustaining the defendants' argument. It has to do with income from a so-called "enterprise", and contemplates a United States

tax or a United Kingdom tax on an enterprise having "a permanent establishment" situated in the taxing state, and accomplishes mutual reciprocity.

Indeed, we have searched the treaty with meticulous care and can find nothing in it, either in express statement or by implication, justifying the conclusion that the exemption in Article XIV is in any way limited by our domestic scheme of taxing the income of trusts.

The defendants argue (p. 20) that where income is accumulated by a trust the taxes are paid by the trustee at a rate dependent on the net income of the trust "having no relationship to the current income of the putative beneficiaries", and conclude that no tax is "imposed" on "any of the beneficiaries" with respect to such accumulated income. Virtually the same situation exists in the case of the distributable income of a trust payable to a resident of the United Kingdom under the treaty or to any other nonresident alien outside of a treaty. Such income is taxed at a flat withholding rate having no relationship whatsoever to the current income of the distributee. In either case, whether the tax is paid by a trustee or by a withholding agent, it is impracticable to be concerned with the individual income tax brackets of the remaindermen or the nonresident aliens. But the tax is nonetheless a tax upon the income of the remainderman or of the nonresident alien. Where the nonresident alien is made exempt by treaty, such income must necessarily be exempt in the hands of the withholding agent or the trustee, for to do otherwise "would have the effect of taxing income which is specifically exempted by treaty". See I. T. 4019, 1950 Cum. Bull. 58, quoted on page 37 of our Opening Brief.

The defendants (p. 22) assert that "an exemption from a United States tax can scarcely have been created in favor of persons who are not subject to a tax and on whom no tax has been imposed", and, below on the same page, the liability of a trustee for tax "is not determinable by the status

of the beneficiaries * * * or by their equitable title in trust property", citing *Lloyd* v. *Delaney*. In dealing with an international convention according a broad and reciprocal exemption in respect to capital gains, there is no inherent reason why the exemption should not be made to depend on the status of the remaindermen of a trust when, aside from the exemption, such remaindermen definitely stand the tax, even though in the first instance the tax is "imposed" on the trustee; on the contrary, in all fairness and justice there is every reason why the exemption should be determined by the status of the remaindermen when such remaindermen are the equitable owners of the capital gains and fully qualify for exemption. Even under our domestic statutes, which expressly make the trust a separate entity and designate the trustee as "the taxpayer", capital gains of a trust permanently set aside for a charitable remainderman are exempt without regard to the exempt status of the trustee. See our Opening Brief, page 36. There is even more reason for applying the same principle in the case of an international treaty which is aimed at equalizing the treatment of capital gains of residents of the two contracting parties.

The defendants (p. 24) say that treaties will not be regarded as destroying earlier statutes unless the purpose to abrogate these statutes is clearly expressed and unless the two are clearly incompatible. The statement of the rule is not complete, but in any event the rule is here immaterial, for Section 22(b)(7) eliminates all conflict between the treaty and our statutory law.

The *Delaney* case arose under Section 421 of our 1939 Code, and so the Court was inclined to follow our domestic rules of taxing trusts. The Court laid its decision upon the difference between "individual income taxes" and "fiduciary income taxes". No such distinction is made in the treaty, either expressly or by implication, so the case has no bearing upon the interpretation of Article XIV, where the principles of the *Tait* case ruling come directly into

play. (See our Opening Brief, page 36, and more particularly, I. T. 4019, 1950 Cum. Bull. 58, quoted on page 37, which represents the considered position of the Commissioner of Internal Revenue.)

The defendants (p. 27) suggest that the exemption for which we contend turns "on the probable future status of persons who might ultimately be economically disadvantaged", and, on the page following, states that such a rule raises "almost impossible difficulties". These statements indicate a complete lack of understanding of our position. The capital gains here involved were realized in 1946, and the exemption accorded by the treaty, whether it be limited to gains on the sale of individually owned property or extended to distributable and retained gains, necessarily must depend upon the state of affairs in the year of sale. See our Opening Brief, pages 55-56, and the authorities cited. Thus under Section 162 (a) of our Code the income of a trust, including capital gains paid or permanently set aside for a charity, is exempt notwithstanding the fact that in the years subsequent to the payment or setting aside such charity may lose its exempt status for a number of reasons, such as engaging in "prohibited transactions". Again, in the case of an individual sale or a sale by a trustee where the gains are currently distributable, the exemption applies, providing only that in the year of sale the requirements for exemption are fulfilled.

In the case of retained gains it is not a question of who in point of fact ultimately will receive such gains or in what year. The only question is whether, in the year of sale, the remaindermen, unquestionably the equitable owners of the capital gains, qualify as residents of the United Kingdom. Capital gains retained for future distribution, although credited to corpus as a matter of trust accounting and though ultimately distributed as part of the corpus, nevertheless represent earnings or profits on the corpus in the year when such earnings or profits occur. The exemp-

tion attaches, and was intended to attach, depending upon the status of the equitable owners of the capital gains in the year when the capital gains occurred. The exempt status of the remaindermen here involved will in all likelihood continue indefinitely.

The defendants (p. 29) also suggest what would be the situation where some of the beneficiaries are residents of the United Kingdom during the year of sale and others are not. This situation is not of course presented in this case, but if such a situation should arise, it would be both appropriate and practically feasible to relieve the qualifying beneficiaries of that portion of the capital gains tax attributable to their interest in the trust. Such a rule would not create any difficulty in application. A similar problem arises under the so-called attribution of stock ownership rules applicable to trusts. Section 318(a)(2)(B) of the 1954 Revenue Code provides that "Stock owned, directly or indirectly, by or for a trust shall be considered as being owned by its beneficiaries in proportion to the actuarial interest of such beneficiaries in such trust." See also Section 503(a)(1) of the 1939 Code. If such a rule is practical in the case of the attribution of stock ownership, a similar rule should present no difficulty in the administration of Article XIV. But however this may be, where all the beneficiaries qualify, assuredly the tax on capital gains is within the exemption.

The defendants argue (p. 27) that if it had been intended the exemption accorded by Article XIV should cover retained capital gains, "it would be expected" that there would have been inserted an explicit provision so indicating, and on the following page, after characterizing our discussions of the other provisions of the treaty as "misplaced", suggest that as "detailed provisions" were used to deal with other variations from our domestic scheme of taxation, the absence of such detailed provisions in Article XIV indicates the lack of intent to depart from our domestic theory of taxing trusts.

The presence of more or less detailed provisions in certain of the articles of the treaty which override our domestic law does not mean that the absence of similar detailed provisions in a particular article is any indication of an intention to preserve our domestic law. In the construction of a treaty as in the construction of a statute, it is a matter of interpreting the language actually used in the particular article under consideration. General language may be as explicit as detailed language. The detail or lack of detail in a particular article is not ground for any such inference as the defendants suggest, when the language used is amply sufficient to include the exemption claimed. If there was any intent of the negotiators to preserve our domestic law in the case of trusts and impose a tax upon the trustee even though the remaindermen fully meet the requirements of exemption, "it would be expected" that the standard saving clause would have been incorporated into the treaty.

There are two types of instances found in the treaty where the treaty departs from our domestic scheme of taxation. The first type involves a treaty exemption of an item of income which otherwise would be taxable under our domestic law. In this respect Article XIV is clearly and sufficiently explicit, for in terms it exempts "capital gains". The second type deals with the incidence of the tax, that is, who formally is the "taxpayer" relieved from the tax. Article XIV is not explicit in this respect, nor need it be, for nowhere in the treaty is a trust made a separate taxable entity. By way of comparison, in some of the articles involving corporations (such as Article XIII) detailed language was used, but here it was necessary because the treaty itself expressly treats a "corporation" as a separate taxable entity, so that any departure from this rule would have to be made in the form of an express provision in the treaty. On the other hand, as stated above, the treaty does not recognize or define a trust as

an entity, so that in the case of Article XIV no reason existed for a detailed provision in the treaty indicating that a trust was not a separate entity, for the purpose of applying the exemption.

In the middle paragraph on page 30 the defendants say that in the case of trusts absolute reciprocity between the residents of the two countries is almost impossible to achieve, due to the possibility of a higher rate of British tax on ordinary income. This is purely a hypothetical argument without support in the record or in the respective statutes. It is beside the point, for Article XIV with which we are here involved deals with capital gains and the reciprocity of treatment of such gains. Other types of income, such as dividends and interest, are dealt with in other provisions of the treaty.

We do not agree, as the defendants say at the bottom of page 31, that "much the same rules are followed in construing treaties that are used in construing statutes". As we pointed out in our Opening Brief, pages 52 *et seq.*, the search for the intent is of primary importance whether a statute or a treaty is under consideration. But there the similarities of the rules for construing a statute and a treaty depart sharply. It is firmly fixed by our Supreme Court decisions that a treaty "shall be liberally construed, so as to carry out the apparent intention of the parties to secure equality and reciprocity between them", and, further, that "where a treaty admits of two constructions, one restrictive of rights that may be claimed under it and the other favorable to them, the latter is to be preferred" (see quotation from the *Geofroy* case on pages 53-4 of our Opening Brief). No such rules apply in construing a statute. Here is the major difference between the rules of construction.

The defendants make only one reference (the top of page 34) to our argument predicated upon the equitable ownership of the United Kingdom remaindermen, but do

not at any point undertake to answer the argument. (See our Opening Brief, page 37 *et seq.*) Certainly, in interpreting an international treaty a distinction between legal and beneficial ownership is unwarranted, for under modern conditions the equitable ownership of a trust corpus is of greater import than legal ownership. The capital gains here involved were income in equitable ownership of the remaindermen and, assuredly, are within the broad language of Article XIV.

In another material respect the defendants do not even refer to, and so do they attempt to answer, a cogent argument, indicating how irrational it is to make a distinction between capital gains which are currently distributable and capital gains which are retained for future distribution. As we say on page 44 of our Opening Brief, where a gain arises on the sale of property held in trust, in the absence of any controlling language in the trust instrument the gain is distributable or is retained, depending upon the law of the state under which the trust is created. These laws vary between states. In interpreting an international treaty assuredly it should be applied uniformly throughout the United States. To make the exemption in Article XIV depend upon the law under which the trust is created would make the interpretation of an international treaty dependent upon local state law. As we said on page 44 of our Opening Brief, "Such a result is quite unthinkable".

In a number of instances throughout the defendants' brief (pp. 15, 27, 29) it is said that the interests of the United Kingdom remaindermen of the trust were "contingent". On the contrary, it is clear that throughout 1946, the year of sale, the interests of the United Kingdom remaindermen were vested, subject only to a possibility of a future shifting of interest within the closed class. (See our Opening Brief, page 56 *et seq.*) Evidently the defendants are not convinced that the interest was contingent, for in the footnote on page 28 they say, "Even though the

interest of the beneficiaries is 'vested' either for the purpose of the rule against perpetuities or for any other purpose'', etc. Unquestionably, the interests were vested throughout 1946.

As we pointed out in our Opening Brief, page 44, footnote 12, the United States has negotiated nineteen income tax conventions with foreign nations, all of which contain the standard saving clause, save for the conventions with the United Kingdom, New Zealand, Ireland and Australia. In their discussion of the *Lewenhaupt* case and the Swedish treaty (pp. 36-37) the defendants, in an effort to minimize the absence of the standard saving clause in the United Kingdom convention, say that ''the conventions between various countries and the United States were all arrived at through negotiations on a give or take basis and saving provisions in one or more is no indication of the intent as to others'', citing various reports and statements which suggest that income tax conventions are composed of a series of ''compromises'' and ''mutual concessions''. But the argument cuts both ways. In the case of the United Kingdom convention, it was obviously to the advantage of the United States to have the standard saving clause inserted, if for no other purpose than to support the tax in this very case. On the contrary, the British, viewed from their standpoint, would lose, not gain, by incorporating the standard saving clause, even though it were mutually reciprocal. Yet none was inserted, although readily at hand. Unquestionably, the ''give or take'' in the British treaty was such that in respect of the standard saving clause the United States was forced to recede. Yet now before this Court the defendants are endeavoring to write into the British treaty a saving clause which does not appear. If any presumption is to be indulged in as a result of the ''give or take'' and the ''compromises'' in the British convention, it is that as a compromise the United States negotiators were forced to omit the standard saving clause.

The defendants seek comfort in the Treasury regulations (p. 24), particularly in their discussion of the *Lewenhaupt* case and the Swedish treaty (pp. 35, 37-8). We desire to add only one or two brief comments to what we say in our Opening Brief, page 48 *et seq.* The defendants concede that the Treasury regulations here involved are not controlling but contend that they should be given "great weight" (p. 26), saying (p. 35) that in deciding the *Lewenhaupt* case the Tax Court resolved the apparent inconsistency "principally by resort to the Regulations". This is not strictly accurate. The decision was placed mainly on two points, namely, the presence of the standard saving clause in the Swedish treaty and the inapplicability of Article IX since the taxpayer maintained "a permanent establishment" in the United States. Thus the Tax Court concluded independently of the regulations that the taxpayer was not entitled to exemption, which no doubt largely accounts for the statement that the regulations were entitled to great weight.

In the case of the United Kingdom treaty, the defendants concede as they must that the treaty is devoid of any authority sanctioning the issuance of administrative regulations, but argue that Section 62 of our domestic code, which embraces Section 22(b)(7), sanctions the treaty regulations. The argument is not persuasive. The absence of any sanction in the treaty itself cannot be ignored by this indirect approach. Section 22(b)(7) is a flat adoption of the treaty exemption, unconditionally and without limitation. Certainly, as we said on page 49 of our Opening Brief, in the absence of any express sanction in the treaty, the Treasury regulation "is to be viewed with skepticism insofar as it falls short of giving full recognition to Article XIV", when there is involved, as here, the rights of a national of the United Kingdom.

In Summary of Our Position

At the outset of this Reply Brief, we stated that the "crucial issue" is the extent of the exemption accorded under the United Kingdom treaty, an issue which must be resolved within the four corners of the treaty. In conclusion, let us review briefly the considerations which support us in our contention that the capital gains here involved are within the treaty exemption.

On the face of Article XIV the language is simple and all-embracing, "A resident of the United Kingdom * * * shall be exempt from United States tax" on capital gains. The language is amply broad enough to include capital gains of a trust retained for future distribution. There is no limitation or condition on this simple language. The ordinary reader can draw only one conclusion, namely, that a United Kingdom resident shall be free from any capital gains tax which directly or indirectly he would otherwise be forced to bear.

The all-embracing intent expressed in this simple language is fortified by two major and controlling considerations. Those who here claim the exemption were the equitable owners of the capital gains in the year when the gains occurred, and unquestionably stand the tax unless exempted. In construing an international convention directed at equalizing the tax burden falling upon the nationals of the two contracting parties, any distinction between legal ownership and equitable ownership is unwarranted, and substance, not form, should control.

Again, unless the full import of the simple language employed is followed, only partial, not full, reciprocity will be accomplished. The main objective, apparent throughout the treaty, was to put the nationals of the two contracting parties upon the same basis with respect to taxing capital gains. This the defendants at no point deny. They say only (p. 25) that the convention seeks to avoid "double taxa-

tion", with the qualifying statement "in certain cases". The elimination of double taxation is achieved in many instances, but in at least three instances, namely, Articles XIV, XV and XVI, the item is relieved from *all* taxation by *either* of the contracting nations. These instances show the extent to which the two nations went in accomplishing complete reciprocity.

To make a distinction between the exemption of distributable gains and gains retained for future distribution is irrational and unwarranted. In both cases the gains arise from the sale of property held in trust. In both cases the tax falls in truth and substance upon residents of the United Kingdom. As a result of such a distinction, in many cases the exemption would be made to depend upon the varying laws of the states determining whether the gains are currently distributable or are to be retained for future distribution. Finally, the distinction would withhold from residents of the United Kingdom the full measure of reciprocity which the treaty was intended to accomplish, thus placing at a serious disadvantage such residents when compared with the preferential treatment accorded residents of the United States.

The defendants say that we would ascribe to the language of Article XIV a strained and curious meaning. On the contrary, the meaning which we ascribe to such language is a simple, forthright meaning, a meaning which the language has in normal and ordinary use. Indeed it appears to us that it is the defendants who are endeavoring to torture this simple and all-embracing language through the curious and unwarranted device of attempting to limit the language by reading into Article XIV our domestic and technical concepts of taxing the income of trusts. These concepts are entirely irrelevant, for the reasons set forth above. Construing Article XIV within the four corners of the treaty and in accordance with the expressed intent, the capital gains here involved are made exempt from United States taxes.

Conclusion

It is respectfully submitted that the judgment of the Court below should be reversed with costs, and that it be ordered and adjudged that judgment should be entered in favor of the plaintiff in the sum of $570,957.86, with interest thereon as provided by law, as prayed for in the complaint.

Respectfully submitted,

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